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8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA

10 On Appeal from the United States Bankruptcy Court

for the Northern District of California

11 Hon. Edward D. Jellen

12 SONORAN DESERT CHEMICALS, LLC
AND PROTEASE SCIENCES, INC.,

13 Claimants-Appellants,

14 v.

15 ARRIVA PHARMACEUTICALS, INC.,

16 Reorganized Debtor-
17 Appellee.

Consolidated Case Nos. 08-00692-SI and 08-00693-SI

APPELLEE'S BRIEF [PROTEASE AND SONORAN CLAIMS APPEALS]

Date: July 24, 2008

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San Francisco, CA 94102

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I. STATEMENT OF THE CASE

On October 9, 2007, Protease Sciences, Inc. ("PSI") filed a claim (the "PSI Claim") in the bankruptcy case of Arriva Pharmaceuticals, Inc. ("Arriva"). (Appellants' Combined Appendix¹, 004). That same day, Sonoran Desert Chemicals, LLC ("Sonoran", and together with PSI, "Appellants") also filed a claim in Arriva's bankruptcy case (the "Sonoran Claim", and together with the PSI Claim, the "Claims"). (AA 024.) Each of the Claims alleged the same three bases in support of its request for payment. (AA 005, 025.) Importantly, each proof of claim was signed by John Lezdey alone. (AA 004, 024.)

After Arriva objected to the PSI and Sonoran Claims, the United States Bankruptcy Court for the Northern District of California (the "Bankruptcy Court") disallowed each of the Claims and alternatively estimated them at zero for the purposes of voting on Arriva's plan of reorganization. (AA 517, 1.25 – 518, 1.14; 521, 1.7-11). In its ruling, the Bankruptcy Court stated that because of the preliminary injunction issued against Mr. Lezdey by the Superior Court of Maricopa County, Arizona, Mr. Lezdey "can't do anything" on behalf of PSI and Sonoran "as a matter of nonbankruptcy state law." (AA 518:3-9.) The Bankruptcy Court expressly stated that its jurisdiction was not restricted by the Arizona court's rulings, thus disclaiming any reliance on the Rooker-Feldman doctrine.² (AA 518:3-5.) The orders of the Bankruptcy Court (the "Disallowance Orders") disallowing the PSI and Sonoran Claims without leave to amend and alternatively estimating each of the Claims at zero for voting purposes were entered on December 27, 2007. (AA 435-36, 439-40.)

The Bankruptcy Court was correct when it disallowed the Claims of PSI and Sonoran. The Bankruptcy Court accurately carried out its function under Bankruptcy Code 502(b)(1) and evaluated the Claims' validity under applicable non-bankruptcy law. In so

¹ Hereinafter, citations to Appellants' Combined Appendix shall be in the following form: (AA 001.)

² Stated briefly, the Rooker-Feldman doctrine holds that a lower federal court does not have jurisdiction to review the decisions of a state court. *Rooker v. Fidelity Trust*, 263 U.S. 413 (U.S. 1923); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (U.S. 1983).

1 doing, the Bankruptcy Court correctly gave preclusive effect to the Preliminary Injunction
 2 issued by the Arizona Court that deprived John Lezdey of authority to act on behalf of PSI
 3 and Sonoran. This was the sole reason for the Bankruptcy Court's decision and so is the
 4 focus of this brief.³

5 The Appellants' arguments in their Opening Brief, many of which were not raised
 6 below and so should be deemed waived, are without merit. Arriva clearly has standing to
 7 object to the claims of PSI and Sonoran both because the Preliminary Injunction was
 8 intended for its benefit and because at the time of the Objection it was a Chapter 11 debtor
 9 from whom PSI and Sonoran sought payment of considerable sums. The contentions that
 10 the Bankruptcy Court encroached upon state and corporate law simply misunderstand the
 11 function of a bankruptcy court under Bankruptcy Code Section 502(b)(1) and are wrong.
 12 The contention that the apparent authority doctrine validates the filing of the Claims not
 13 only misunderstands the Bankruptcy Code but also the apparent authority doctrine itself.

14 The Bankruptcy Court was correct in disallowing the Claims of PSI and Sonoran.
 15 This Court should affirm.

16 II. STANDARDS OF REVIEW

17 An appellate court reviews a bankruptcy court's findings of fact under the clearly
 18 erroneous standard, *Sousa v. Miguel*, 32 F.3d 1370, 1372 (9th Cir. 1994), and its
 19 conclusions of law de novo. *In re Park-Helena Corp.*, 63 F.3d 877, 880 (9th Cir. 1995).

20 III. STATEMENT OF THE FACTS

21 In order to understand why the Bankruptcy Court was correct in disallowing the
 22 claims filed by John Lezdey on behalf of PSI and Sonoran, it is necessary to understand the
 23
 24

25 _____
 26 ³ Though Arriva submits, as it argued below, that the Rooker-Feldman doctrine and the
 27 doctrine of collateral estoppel as to the burglary allegations also provide additional and
 28 alternative support for the Bankruptcy Court's ruling, it will not argue these bases here as
 the Bankruptcy Court did not rely upon them in disallowing the Claims of PSI and
 Sonoran.

1 background of these claims and the consistent line of court rulings against the Lezdeys⁴
2 with regard to these claims.

3 **A. The Background of the Disallowed Claims.**

4 In the early 1990s, Dr. Allan Wachter and John Lezdey invented and jointly acquired
5 patents for medical technologies related to the treatment of inflammation. (AA 184.) In
6 1992, Dr. Wachter and Lezdey transferred their interests in the patents to Sonoran, which
7 they had formed together. Sonoran was 50% owned by Wachter, and 50% owned by John
8 Lezdey. (AA 184.) Shortly thereafter, Dr. Wachter and Lezdey formed PSI, authorizing it
9 to enter into licensing agreements on behalf of Sonoran. (AA 109, 242.)

10 In 1997, Wachter, Lezdey, Philip Barr and David Kent formed Arriva, then known as
11 AlphaOne Pharmaceuticals, Inc. (AA 240.) Arriva seeks to develop protease inhibitors for
12 treatment of respiratory diseases. Its main product under development is the biotherapeutic
13 recombinant alpha 1-antitrypsin, commonly called "rAAT," which the company
14 manufactures in engineered yeast cells. Arriva also has been active in developing the
15 protease inhibitors Ilomastat and SLAPI.

16 On April 16, 1998, PSI and Arriva entered into a License Agreement (the "Protease
17 License") by which PSI granted to Arriva an exclusive license to exploit certain patents
18 related to rAAT as set forth therein (the "Protease Patents").

19 **B. The Arizona Court Upholds the Protease License and Issues Injunctions**
20 **Against the Lezdeys.**

21 After the execution of the Protease License, the Lezdeys began to make the first of
22 their many and repeated claims that the Protease License was invalidly executed. These
23 claims included threats of litigation against both Arriva and Allan Wachter. (AA 246.)
24
25

26 ⁴ The "Lezdeys" shall mean collectively John Lezdey; Noreen Lezdey; Jarett Lezdey;
27 Darren Lezdey; AlphaMed Pharmaceuticals Corp.; J.L. Technology, L.P.; J.L. Technology
28 Ltd.; Jamie Holdings, LLC; J & D Science Inc.; and certain of their respective successors
and assigns.

1 These claims have been made by various of the Lezdeys in several courts, and the result has
2 been a consistent line of judgments against the Lezdeys.

3 Initially, since both Arriva and Allan Wachter had been threatened with litigation,
4 Arriva and Wachter filed multiple suits against the Lezdeys to put these claims to rest.
5 These suits included a suit filed by Arriva in 1999 in the United States District Court for the
6 Northern District of California and a suit filed by Wachter shortly thereafter in the Superior
7 Court of Maricopa County, Arizona (the "Arizona Court"). Arriva and Wachter concluded
8 that the Arizona Court would be the most convenient forum to address the Lezdeys' claims,
9 and so Arriva agreed to finance Wachter's suit in the Arizona Court. (AA 246). All parties
10 agreed that the litigation in the Northern District of California would be stayed while the
11 litigation in the Arizona Court was pursued. (AA 246.)

12 Wachter's suit in Arizona sought, among other things, declaratory relief and
13 injunctions against various of the Lezdeys. (AA 242.) The Arizona Court first ruled against
14 the Lezdeys' assertions and found the Protease License to be valid on February 3, 2000, in
15 the context of issuing a preliminary injunction against John, Darren, and Jarett Lezdey, J&D
16 Science, Inc. and J.L. Technology Limited (the "Preliminary Injunction"). (AA 242-43,
17 347-359.) The Preliminary Injunction enjoined said parties and "any other persons acting
18 for them or with them" from "acting or speaking, or purporting to act or speak, on behalf of
19 [PSI] or Sonoran without Plaintiffs' [Dr. Wachter's] express consent." (AA 243, 359.) The
20 Preliminary Injunction remains in force to this day.

21 In November of 2000, the Arizona Court added to its findings in support of the
22 Preliminary Injunction by issuing an amendment thereto. (AA 186.) In that amendment,
23 the Arizona Court held that a purported license between PSI and AlphaMed was invalid and
24 that John Lezdey had testified untruthfully in his deposition regarding such purported
25 PSI/AlphaMed license. (AA 186.)

26 In January of 2002, a bench trial occurred in Arizona. The bench trial had been
27 delayed several times, including by an unsuccessful attempt of John Lezdey to have the trial
28 removed to federal court in Arizona. (AA 186.) Also, John Lezdey filed bankruptcy on the

1 day before the trial was to commence, so the trial was automatically stayed as to him.
2 Nonetheless, the trial proceeded against Darren Lezdey, Jarett Lezdey, Noreen Lezdey and
3 J.L. Technology. The trial included multiple hours of witness testimony and the
4 introduction of almost 300 exhibits. (AA 186.)

5 On February 22, 2002, the Arizona Court issued a final judgment against the Lezdey
6 sons and a related entity, J.L. Technology, L.P. (AA 187.) The judgment included two
7 main components: (a) a permanent injunction (the "Permanent Injunction"); and (b) a
8 money judgment (the "Wachter Judgment"). The Permanent Injunction included another
9 finding in favor of the validity of the Protease License, and enjoined Darren Lezdey, Jarett
10 Lezdey, J.L. Technology and "any other persons or entities acting in concert with them"
11 from "acting or speaking, or purporting to act or speak, on behalf of" PSI or Sonoran
12 without Dr. Wachter's "express written consent." (AA 174-75.) In addition, the Permanent
13 Injunction enjoined these same parties "and any other persons or entities acting in concert
14 with them" from "taking any actions in any capacity to give effect to (or to draw to
15 themselves or any entity, including AlphaMed Pharmaceuticals, Inc., any benefit from) the
16 invalid License Agreements between" PSI and AlphaMed. (AA 175.)

17 As to the monetary component, the Wachter Judgment included compensatory and
18 punitive damages in the amount of \$17.4 million, which with interest now exceeds \$20
19 million. (AA 187, 246.) As part of the agreement between Arriva and Wachter by which
20 Arriva agreed to finance the Arizona litigation, Arriva received a share in the collection of
21 moneys from the Wachter Judgment. (AA 246.) The Wachter Judgment has since been
22 assigned to Arriva in toto as part of Arriva's plan of reorganization. (Appellee's Combined
23 Special Appendix,⁵ 153, § 6.4(d).)

24 After the entry of the Permanent Injunction, the Arizona Court entered an "Under
25 Advisement Ruling" against John Lezdey. In that Ruling, the court noted, among other
26

27 ⁵ Hereinafter, citations to Appellee's Combined Special Appendix shall be in the following
28 form: (SPA 001.)

1 things, that John Lezdey had failed to pay court fines, failed to cure contempt citations and
 2 taken many actions that constituted a violation of the Preliminary Injunction. Such actions
 3 included speaking for Sonoran in a patent interference proceeding in the Patent and
 4 Trademark Office, appearing in a European Court of Patent Appeals without Dr. Wachter's
 5 consent, and contacting a group of Arriva investors without Wachter's consent. The Ruling
 6 ordered John Lezdey to surrender himself to the Maricopa County Sheriff's Office for
 7 incarceration if he failed to purge the contempt by a set date. (AA 188, 245.)

8
 9 **C. The Northern District of California Recognizes the Arizona Court's Rulings
 and Finds John Lezdey to Lack the Capacity to Act on Behalf of Sonoran.**

10 As stated above, in May of 1999, Arriva filed a complaint in this Court, before
 11 United States District Judge Illston. (AA 185.) The case was filed by Arriva to obtain relief
 12 in connection with the Protease License and a declaration that the Protease License was
 13 valid. (AA 247.) The case was held in abeyance as the litigation proceeded in the Arizona
 14 Court. Since appropriate relief was obtained in the Arizona Court declaring the Protease
 15 License valid, Arriva attempted to dismiss the litigation in the Northern District of
 16 California, which included counterclaims made by various of the Lezdeys. (AA 247.) One
 17 of the counterclaims was filed by John Lezdey on behalf of Sonoran. (AA 188.)

18 District Judge Illston ultimately granted Arriva's motion to dismiss the defendants'
 19 counterclaims for declaratory relief. (AA 195.) In reaching this conclusion, District Judge
 20 Illston noted:

21 Lezdey knew the material terms and conditions of the
 22 [Protease] License Agreement, advised Wachter that the
 23 Agreement was valid, and approved Wachter's execution
 thereof.

24 (AA 186.) In addition, District Judge Illston noted the Arizona Court had determined "Arriva's
 25 Protease License is 'valid and enforceable.'" (AA 186.) Applying the *Brilhart* doctrine, District
 26 Judge Illston found that after sustaining "several adverse rulings in Arizona," the Lezdeys
 27 engaged in forum shopping—"opportunistic maneuvering the Ninth Circuit has discouraged."
 28 (AA 193.) Consequently, District Judge Illston held that the Arizona Court's holding that

1 Arriva's Protease License was valid rendered all other judicial proceedings duplicative: "The
2 Court concludes that the Protease/Arriva license issue has already been extensively litigated in
3 the Arizona Court, and that any litigation in this court would be duplicative." (AA 190.)

4 In particular, as to the counterclaim filed by John Lezdey on behalf of Sonoran,
5 District Judge Illston held that the counterclaim must be dismissed due to the fact that
6 "Sonoran lacks capacity to file the counterclaim because it does not have Wachter's
7 authorization." (AA 194.) More specifically, the Court held that such capacity was lacking
8 because Lezdey did not obtain Wachter's consent to the filing of the counterclaim, which
9 consent was required by both Sonoran's Operating Agreement and by the Preliminary
10 Injunction. (AA 194-95.)

11 **D. Arriva Prevails Against Similar Claims by AlphaMed in Florida.**

12 In 2003, another Lezdey entity, AlphaMed Pharmaceuticals Corp. ("AlphaMed")
13 filed suit against Arriva in the United States District Court for the Southern District of
14 Florida (the "Florida Court"). In 2005, the lawsuit proceeded to trial on three claims:
15 (1) misappropriation of trade secrets, (2) tortious interference with business and (3) unfair
16 competition. *See AlphaMed v. Arriva*, 432 F. Supp. 2d 1319, 1329 (S.D. Fla. 2006).
17 Initially, a jury returned a verdict in favor of AlphaMed. Arriva timely moved for judgment
18 as a matter of law ("JMOL") under Rule 50(b) of the Federal Rules of Civil Procedure.
19 District Judge Cecilia Altonaga granted Arriva's motion for JMOL, ordering as follows:

20 [I]t is hereby ORDERED AND ADJUDGED that judgment is
21 entered in favor of [Arriva] . . . and against Plaintiff AlphaMed
22 Pharmaceuticals Corp. Plaintiff shall take nothing from
23 Defendants, and the action is DISMISSED on the merits.

(AA 198.)

24 In the course of her opinion, Judge Altonaga also gave preclusive effect to the
25 findings of the Arizona Court, stating that: "John Lezdey's assertion that the license
26 agreement was executed without his approval is contradicted by a permanent injunction
27 entered in *Wachter v. Lezdey*, Case No. CV-99-009335" *AlphaMed Pharms. Corp. v.*
28 *Arriva Pharms., Inc.*, 432 F. Supp. 2d at 1324, n.6.

1 As in other litigation with the Lezdeys, Judge Altonaga held John Lezdey and
 2 AlphaMed in contempt of court during the course of trial, this time for violating a
 3 confidentiality order of the court. (AA 250; SPA 416-17.)

4 **E. Arriva's Bankruptcy Case and the Disallowance of the Sonoran and PSI**
 5 **Claims.**

6 Despite this consistent line of court rulings, the Lezdeys continued to make their
 7 baseless assertions to rights in Arriva's intellectual property portfolio, in particular in a suit
 8 filed by various Lezdey entities against Arriva in Nevada state court in June of 2007. Due
 9 to the effect of these continued baseless claims on Arriva's ability to raise the funding it
 10 needs to bring its products to market, Arriva voluntary filed for bankruptcy on August 29,
 11 2007 under chapter 11 of title 11 of the United States Code. Arriva's bankruptcy case was
 12 filed in the United States Bankruptcy Court for the Northern District of California as Case
 13 No. 07-42767, and was presided over by Hon. Edward D. Jellen, United States Bankruptcy
 14 Judge.

15 On October 9, 2007, PSI filed its Claim in Arriva's bankruptcy case in the amount of
 16 \$30 million, which claim was listed as Claim No. 12 on the claims register. (AA 004.)
 17 That same day, October 9, 2007, Sonoran also filed its Claim in Arriva's bankruptcy case in
 18 an undetermined amount, which Claim was listed as Claim No. 14 on the claims register.
 19 (AA 024). Each proof of claim form was signed by John Lezdey and only John Lezdey.
 20 (AA 004, 024.) Immediately following the proof of claim form was a page listing the three
 21 bases for the Sonoran and PSI claims. (AA 005, 025.) For each of the Sonoran and PSI
 22 Claims, the bases were exactly the same:

- 23 "1. An action has been filed in Nevada against Arriva et al
 24 related to the findings of the jury in the Miami lawsuit
 25 of AlphaMed Pharmaceuticals vs. Arriva. The enclosed
 26 jury findings are attached.
- 27 "2. Arriva agents have broken in offices and homes wherein
 28 trade secrets were stored which were stolen. The trade
 secrets appeared in Arriva's patent applications.

1 “3. Arriva paid Wachter to file lawsuits to harass the
2 company and to waste its assets as per Arriva/Wachter
3 agreement which has been filed in this court.”

4 (AA 005, 025.) This same sheet of paper was also attached to support two other proofs of
5 claim filed by the Lezdeys – those of JL Technology LP (“JL”) and Jamie Holding
6 Company, LLC (“Jamie Holding”). (SPA 305, 321.)

7 Arriva responded by filing a timely objection to the Claims as part of its Omnibus
8 Objection (the “Objection”) to various Lezdey-related claims on November 7, 2007. (AA
9 200-207.) In the Objection and the Memorandum of Points and Authorities filed in support
10 of the Objection, Arriva explained that, among other things:

11 (1) John Lezdey did not have the authority to file proofs of claim on behalf of PSI
12 and Sonoran since he had not obtained the consent of Allan Wachter as required under the
13 Preliminary Injunction (AA 203, 220-21; SPA 364); and

14 (2) Even if the court were to find Lezdey to have had the authority to file the proofs
15 claim, the bases for the Claims were insufficient to hold a valid claim in bankruptcy
16 because:

17 (a) the jury verdict form which was attached to the Claims could not serve as
18 a valid basis for a claim in bankruptcy because the jury verdict had been overturned
19 by the JMOL (AA 202, 221-23; SPA 364-67);

20 (b) the burglary allegations were barred by collateral estoppel arising from
21 the Arizona litigation and were also vague and unsubstantiated (AA 202-03, 226-
22 30; SPA 368); and

23 (c) the fact that Arriva financed the Arizona litigation could not serve as a
24 basis for a claim since such financing is perfectly legal, and the implications
25 regarding malicious prosecution were wholly unfounded since Wachter prevailed in
26 Arizona (AA 202-03, 230; SPA 368-69).

27 Arriva sought the disallowance of the PSI and Sonoran Claims, along with the claims of
28 various other Lezdey-related entities, and in the alternative, sought to have said claims
valued at zero under Bankruptcy Code Section 502(c) for the purposes of calculating the

1 number and weight of the votes the claimants would be allotted on Arriva's plan of
2 reorganization. (AA 207, 231-32; SPA 370-72.)

3 A hearing was held on the PSI and Sonoran Claims on December 13, 2007. At the
4 conclusion of the hearing, Judge Jellen disallowed each of the PSI and Sonoran Claims and
5 alternatively estimated them at zero. (AA 517, 1.25 – 518, 1.14; 521, 1.7-11). In so ruling,
6 Judge Jellen stated:

7 “[T]he omnibus objection will be sustained as to Protease
8 [PSI]. The record is clear that Mr. Lezdey filed the claim on
9 behalf of Protease. He filed it in violation of a preliminary
injunction. I do not believe that the injunction in any way
restricts or limits Federal Courts or Federal Court jurisdiction.

10 All it does is restrict Mr. Lezdey from what he can do on
11 behalf of Protease. And the answer is that he can't do
12 anything. And that was a matter of nonbankruptcy state law as
to what his authority is, Mr. Lezdey's authority, as to Protease.

13 And so I reject the argument that not letting him file the claim
for Protease is in derogation of any Federal jurisdiction.

14 For the exact same reason I sustain the omnibus objection as to
15 Sonoran.”

16 (AA 517:25 – 518:14.)

17 The Bankruptcy Court's orders disallowing the PSI and Sonoran Claims without
18 leave to amend and alternatively estimating each of the Claims at zero for voting purposes
19 were entered on December 27, 2007. (AA 435-36, 439-40.) The Bankruptcy Court also
20 disallowed and estimated at zero the claims of JL and Jamie Holding, who had alleged
21 identical bases for their claims as PSI and Sonoran, but who did not face the lack of
22 authority issue like PSI and Sonoran. (SPA 335-36, 339-40.)

23 On January 30, 2008, following a confirmation hearing on January 16, 2008 (SPA
24 118-19, docket #331), the Bankruptcy Court issued an Order confirming Arriva's plan of
25 reorganization. (SPA 123, docket #347.)

26 **F. This Appeal.**

27 On January 4, 2008, the Lezdeys' counsel filed notices of appeal of the Disallowance
28 Orders with regard to the PSI and Sonoran Claims. (AA 449, 456.) The Lezdeys also

1 initiated four related appeals. This Court dismissed as moot the first of these, 08-1279-SI,
 2 on May 27, 2008. This Court has ordered briefing on the remaining appeals, 08-00691-SI
 3 and 08-00825-SI, contemporaneous with the instant appeal.

4 IV. SUMMARY OF THE ARGUMENT

5 This Court should affirm because the Bankruptcy Court was correct in ruling that
 6 Full Faith and Credit required it to give preclusive effect to the findings in support of the
 7 Preliminary Injunction, which findings held that John Lezdey lacked the authority to act on
 8 behalf of PSI and Sonoran without Allan Wachter's consent. The Bankruptcy Court
 9 expressly did not rely upon jurisdictional doctrines such as the Rooker-Feldman doctrine, as
 10 Appellants suggest, but rather performed its normal function of evaluating a claim under
 11 "applicable non-bankruptcy law" pursuant to 11 U.S.C. § 502(b)(1).

12 Appellants newly-raised arguments, which should be deemed waived since they were
 13 never raised below, are also without merit. Arriva has standing to object to the filing of the
 14 PSI and Sonoran Claims by Lezdey, as shown by Arriva's relationship with Wachter and by
 15 Arriva's status as a Chapter 11 debtor. Appellants are also incorrect in asserting that the
 16 Bankruptcy Court, in carrying out its usual function under Section 502(b)(1), somehow
 17 encroached upon state or corporation law. Finally, Appellants' argument that the apparent
 18 authority doctrine validates Mr. Lezdey's actions is contradicted by the Bankruptcy Code
 19 and the apparent authority doctrine itself.

20 V. ARGUMENT

21 A. The Bankruptcy Court Correctly Found that the Preliminary Injunction 22 Deprived John Lezdey of Authority to File the Proofs of Claim.

23 In announcing its decision, the Bankruptcy Court stated that "All [the Preliminary
 24 Injunction] does is restrict Mr. Lezdey from what he can do on behalf of Protease. And the
 25 answer is that he can't do anything. And that was a matter of nonbankruptcy state law as to
 26 what his authority is, Mr. Lezdey's authority, as to Protease." (AA 518:6-9.) The
 27 Bankruptcy Court then incorporated the same finding with respect to its disallowance of
 28 Sonoran's Claim. (AA 518:13-14.) Appellants argue that in so ruling, the Bankruptcy

1 Court erred because, among other things, the Bankruptcy Court could not give Full Faith
 2 and Credit to the Preliminary Injunction. The Bankruptcy Court was correct in its ruling
 3 and the Appellants are incorrect.

4 1. The Bankruptcy Court Properly Gave Full Faith and Credit to the Arizona
 5 Court's Findings in the Preliminary Injunction.

6 a. *Full Faith and Credit and Collateral Estoppel in Arizona.*

7 The Bankruptcy Court did not err in giving preclusive effect to the Preliminary
 8 Injunction in order to find that under applicable non-bankruptcy law, Mr. Lezdey had no
 9 power to act on behalf of PSI and Sonoran. Federal courts are required by 28 U.S.C.
 10 § 1731, which was enacted pursuant to the authority granted to Congress in Article IV,
 11 Section 1 of the United States Constitution, to give "full faith and credit" to the "records and
 12 judicial proceedings" of state courts. This means that federal courts are to give the same
 13 preclusive effect to state court judgments as would the courts of that state. *Noel v. Hall*, 341
 14 F.3d 1148, 1166 (9th Cir. 2003).

15 Under Arizona law, when the findings in support of a preliminary injunction are
 16 made final by the issuance of a permanent injunction, they are granted preclusive effect.
 17 *City of Glendale v. Aldabbagh*, 189 Ariz. 140, 144 (Ariz. 1997) ("There is also no question
 18 that had the findings in support of granting the preliminary injunction been made final in the
 19 action, Aldabbagh would have been collaterally estopped from relitigating those facts."). In
 20 *City of Glendale* itself, the parties stipulated to the dismissal of the action before a
 21 permanent injunction was issued, so the court found there to be no preclusive effect. *Id.*
 22 For this reason, the Appellants' citation to *Glendale* is inapt, as it fails to take into account
 23 the court's holding that the findings in support of a preliminary injunction are granted
 24 preclusive effect when they are made final by a permanent injunction. For this reason also,
 25 the Appellants' citations to other Arizona case law miss the mark. In *State v. Shallock*, 941
 26 P.2d 1275, 1280 (Ariz. 1997), a case having nothing to do with injunctions, the court merely
 27 cited the ruling in *City of Glendale* that a preliminary injunction on its own does not give
 28 rise to collateral estoppel. Likewise, *Elia v. Pifer*, 977 P.2d 796, 803 (Ariz. Ct. App. 1998)

1 is another case that has nothing to do with injunctions in which the court merely cited the
 2 ruling in *City of Glendale* that "findings at preliminary injunction hearing not sufficient to
 3 permit application of collateral estoppel doctrine because case settled instead of going on to
 4 the permanent injunction stage with entry of final judgment." *Elia*, 977 P.2d at 803.

5 In Arizona, "[c]ollateral estoppel, or issue preclusion, applies when an issue was [1]
 6 actually litigated in a previous proceeding, [2] there was a full and fair opportunity to
 7 litigate the issue, [3] resolution of the issue was essential to the decision, [4] a valid and
 8 final decision on the merits was entered, [5] and there is common identity of parties."
 9 *Hullett v. Cousin*, 204 Ariz. 292, 298 (2003). Significantly, a prior judgment will bind not
 10 only parties to the previous lawsuit, but also their privies. *Farmers Ins. Co. v. Vagnozzi*,
 11 138 Ariz. 443, 446 (1983) (stating that under issue preclusion, "the determination of a
 12 litigated fact or law which is essential to a valid and final judgment is conclusive between
 13 the parties *or their privies* in a subsequent claim") (emphasis added); *Dressler v. Morrison*,
 14 212 Ariz. 279, 282 (2006); *Wetzel v. Arizona State Real Estate Dep't*, 151 Ariz. 330, 332
 15 (Ct. App. 1986); *Matusik v. Arizona Pub. Serv. Co.*, 141 Ariz. 1, 3 (Ct. App. 1984).

16 To determine whether there is "privity between a party and a non-party," a court
 17 must find "a substantial identity of interests and a working or functional relationship in
 18 which the interests of the non-party are presented and protected by the party in the
 19 litigation." *Hall v. Lalli*, 194 Ariz. 54, 57 (1999) (quoting *Phinisee v. Rogers*, 229 Mich.
 20 App. 547, 582 (1998)) (internal quotation marks and alterations omitted). The party and
 21 non-party must have common objectives, and not merely similar interests. *Id.* at 58. While
 22 Arizona case law is sparse on the matter, the Ninth Circuit has found privity in a wide range
 23 of circumstances, and especially between corporations and their major shareholders. *See*
 24 *Montana v. United States*, 440 U.S. 147, 154 (1979) (holding that "one . . . who assists in
 25 the prosecution or defense of an action in aid of some interest of his own . . . is as much
 26 bound . . . as he would be if he had been a party to the record") (citation and internal
 27 quotation marks omitted); *W. Radio Servs. Co. v. Glickman*, 123 F.3d 1189, 1196 (9th Cir.
 28 1997) (finding privity between president and corporation); *In re Gottheiner*, 703 F.2d 1136,

1 1139-40 (9th Cir. 1983) (finding privity between corporation and majority shareholder who
 2 controls corporation's affairs); *Blitch Ford, Inc. v. MIC Prop & Cas. Ins. Corp.*, 90 F. Supp.
 3 2d 1377, 1380 & 1381, n.2 (M.D. Ga. 2000) (finding privity between secretary/minority
 4 shareholder and corporation for purposes of collateral estoppel).

5 b. *The Bankruptcy Court Correctly Found That Collateral Estoppel*
 6 *Applies to the Issue of John Lezdey's Authority to Act on Behalf of PSI*
and Sonoran.

7 The Preliminary Injunction enjoined Mr. Lezdey and other of the Lezdeys "from
 8 acting or speaking, or purporting to act or speak, on behalf of [PSI] and Sonoran without
 9 [Wachter's] express consent." (AA 359.) In support of the injunction, the Arizona Court
 10 issued several findings of fact chronicling various invalid corporate actions taken by John
 11 Lezdey and other of the Lezdeys mainly on behalf of PSI, but also on behalf of Sonoran and
 12 even Arriva. (AA 179, 347-58.) Among these were:

13 "67. [John] Lezdey, Darren Lezdey, and Jarett Lezdey, have
 14 claimed authority to act on behalf of Protease without
 15 Wachter's consent or the authorization of the Protease Board
 16 of Directors and have acted in ways detrimental to the interests
 17 of Protease, Sonoran and/or Plaintiffs, including, without
 18 limitation: conducting discussions or negotiations with other
 19 companies to form business arrangements involving the
 20 development of certain uses of [AAT] in violation of the
 21 License Agreement; purporting to 'fire' Protease's and
 Sonoran's legal counsel and assuming the representation
 thereof; hiring attorneys to represent Protease and/or Sonoran
 in litigation commenced by [Arriva] to assert positions not
 approved by Protease's Board of Directors and inconsistent
 with its interests under the License Agreement." (AA 357-58.)

22 Though John Lezdey filed for bankruptcy on the eve of the ensuing bench trial, these
 23 findings were made final under *City of Glendale* when the Permanent Injunction was issued
 24 following the aforesaid bench trial. (AA 243-44.)

25 Thus, all the prongs of Arizona's collateral estoppel test have been clearly met. First,
 26 Mr. Lezdey's authority to act on behalf of PSI and Sonoran has been decided by the Arizona
 27 Court in the context of issuing the Preliminary Injunction, which ordered that he did not
 28 have the authority to act on behalf of PSI and Sonoran without Wachter's consent. Second,

1 Mr. Lezdey and the remainder of the Lezdeys had a full and fair opportunity to litigate this
 2 issue, as the Arizona proceedings were complete with evidentiary hearings and, as to certain
 3 other of the Lezdeys, a full bench trial. Third, resolution of the issue of Mr. Lezdey's
 4 authority was clearly necessary in order to issue an injunction against him from exercising
 5 said authority.

6 Fourth, the Arizona Litigation resulted in a valid and final decision on the merits.
 7 After trial, the Arizona Court made the Preliminary Injunction a Permanent Injunction (AA
 8 162) and entered a money judgment in favor of Dr. Wachter. (AA 381.) This decision
 9 remains a "final judgment" for the purposes of issue preclusion. *Tripathi v. Henman*, 857
 10 F.2d 1366, 1367 (9th Cir. 1988); *Campbell v. Szl Props.*, 204 Ariz. 221, 222 (Ct. App.
 11 2003) (holding that a lower court's decision is final for preclusion purposes unless vacated).

12 Fifth, there is a common identity of parties, in that Mr. Lezdey was a party to the
 13 Preliminary Injunction and now claims that he has the authority to file proofs of claim on
 14 behalf of PSI and Sonoran. Inasmuch as the analysis should refer to PSI and Sonoran,
 15 technically the legal entities that have filed this appeal, the Lezdey-controlled versions of
 16 PSI and Sonoran should be deemed to be privies of Mr. Lezdey. In this case, there is clearly
 17 "a substantial identity of interests and a working or functional relationship in which the
 18 interests of the non-party are presented and protected by the party in the litigation," *Halli v.*
 19 *Lalli*, 194 Ariz. 54, 57 (1999). The Lezdey-controlled versions of PSI and Sonoran are
 20 nothing more than Mr. Lezdey himself. As noted previously, the PSI and Sonoran Claims
 21 were signed by Mr. Lezdey alone. (AA 004, 024.) Bases for the Claims included the
 22 overturned jury verdict from the Florida litigation, which litigation was not between Arriva
 23 and PSI or Sonoran, but rather between Arriva and AlphaMed, another Lezdey entity, which
 24 was also named in the Preliminary and Permanent Injunctions.⁶ (AA 005, 025.) Thus,
 25 when under the unlawful control of John Lezdey, there is no difference for the purposes of

26 _____
 27 ⁶ Both the Preliminary Injunction (as amended) and the Permanent Injunction enjoin the
 28 named Lezdey defendants from taking any actions in any capacity, including on behalf of
 AlphaMed, to give effect to the invalid PSI/AlphaMed license. (AA 175:14-22; 180:12-18.)

1 the collateral estoppel analysis between PSI and Sonoran on the one hand and Mr. Lezdey
2 on the other.

3 Consequently, the Bankruptcy Court correctly gave preclusive effect to the
4 Preliminary Injunction under the Full Faith and Credit Clause and the Arizona collateral
5 estoppel rules. By ruling in such manner, the Bankruptcy Court reached a decision very
6 similar to the one reached by this Court when it dismissed a counterclaim filed by Sonoran
7 against Arriva on the basis that John Lezdey lacked capacity to act on behalf of Sonoran.
8 (AA 194-95.)

9 **B. The Bankruptcy Court Correctly Evaluated the Legal Basis for the Claims**
10 **Under Applicable Non-Bankruptcy Law in Order to Give Preclusive Effect to**
11 **the Preliminary Injunction.**

12 One of the basic flaws underlying the Appellants' Opening Brief is that it assumes
13 that in order to have ruled as it did, the Bankruptcy Court would have had to have relied
14 upon jurisdictional grounds, specifically the Rooker-Feldman doctrine. (Opening Brief,
15 7:20 – 12:27.) As evidenced by the Bankruptcy Court's rulings, what rather happened is
16 that, as required under Bankruptcy Code Section 502(b)(1), the Bankruptcy Court evaluated
17 the legal basis for the claim under applicable nonbankruptcy law and gave preclusive effect
18 to the Arizona Court's rulings, as explained above.

19 1. The Bankruptcy Court's Ruling Expressly Disclaimed Reliance on Rooker-
20 Feldman and Instead Cited Applicable Non-Bankruptcy Law as its Basis.

21 The Bankruptcy Court's rulings announced in open court make clear that it did not
22 rely upon the Rooker-Feldman in disallowing the PSI and Sonoran Claims. Indeed, though
23 the Bankruptcy Court discussed Rooker-Feldman at the same hearing, the entire discussion
24 of Rooker-Feldman was in the context of dismissing AlphaMed's adversary complaint. (AA
25 517:3-21.) Instead, when disallowing the PSI and Sonoran Claims, the Bankruptcy Court
26 stated:

27 "I do not believe that the injunction in any way restricts or
28 limits Federal Courts or Federal Court jurisdiction.

All it does is restrict Mr. Lezdey from what he can do on
behalf of Protease. And the answer is that he can't do

1 anything. And that was a matter of nonbankruptcy state law as
2 to what his authority is, Mr. Lezdey's authority, as to Protease.

3 And so I reject the argument that not letting him file the claim
4 for Protease is in derogation of any Federal jurisdiction.

5 For the exact same reason I sustain the omnibus objection as to
6 Sonoran."

7 (AA 518:3-14.) The Bankruptcy Court later noted that its statements on the record
8 constituted its findings and conclusions of law in support of its rulings. (AA 521:3-4.)
9 When the Bankruptcy Court stated "I do not believe that the injunction in any way restrict
10 or limits Federal Courts or Federal Court jurisdiction", (AA 518:3-5), the Bankruptcy
11 Court by necessity disclaimed any reliance on the Rooker-Feldman doctrine for its ruling,
12 since the effect of the Rooker-Feldman would be to deny the Bankruptcy Court jurisdiction
13 to consider the legal basis for the Claims. *See, e.g., Exxon Mobil Corp. v. Saudi Basic*
14 *Industries Corp.*, 544 U.S. 280, 284 (U.S. 2005). Thus, the Bankruptcy Court explicitly
15 refrained from relying on Rooker-Feldman in disallowing the Claims, but rather found that
16 as a matter of applicable non-bankruptcy law, in this case the law of the State of Arizona,
17 John Lezdey did not have authority to file the proofs of claim on behalf of PSI and
18 Sonoran. To arrive at that conclusion, the Bankruptcy Court gave preclusive effect to the
19 findings of the Arizona Court in the Preliminary Injunction pursuant to the Full Faith and
20 Credit statute and the collateral estoppel doctrine, as discussed above.

21 2. The Bankruptcy Court's Reasoning Is Supported by the Purpose and
22 Mechanics of Bankruptcy Code Section 502.

23 A full understanding of why the Bankruptcy Court's reasoning was correct requires a
24 short discussion of the background of its "applicable non-bankruptcy law" evaluation. The
25 Bankruptcy Code mandates that a claim be evaluated under applicable non-bankruptcy law.
26 Under Bankruptcy Code Section 502(a), a claim is deemed allowed until a "party in
27 interest" objects. A debtor or debtor-in-possession is a party in interest with standing to
28 object. *See, e.g., In re Frazier*, 16 B.R. 674, 677 (Bankr. M.D. Tenn. 1981); *In re America*
West Airlines, 208 B.R. 476, 479 (Bankr. D. Ariz. 1997). Bankruptcy Code Section 502(b)

1 then states a claim will be allowed unless it falls under one of nine enumerated categories.
 2 The broadest and most often cited is Section 502(b)(1): "such claim is unenforceable
 3 against the debtor and property of the debtor, under agreement or applicable law for a
 4 reason other than because such claim is contingent or unmatured." In other words, Section
 5 502(b)(1) states that a claim will be governed by applicable non-bankruptcy state law. *See,*
 6 *e.g., Travelers Casualty & Surety Company of America v. Pacific Gas and Electric*
 7 *Company*, 127 S.Ct. 1199, 1205 (U.S. 2007) (stating that "we have long recognized that the
 8 basic federal rule in bankruptcy is that state law governs the substance of claims, Congress
 9 having generally left the determination of property rights in the assets of a bankrupt's estate
 10 to state law", and that this principle "requires bankruptcy courts to consult state law in
 11 determining the validity of most claims") (internal citations omitted); *see also, In re*
 12 *Eastview Estates II*, 713 F.2d 443, 447 (9th Cir. 1983); *and* 4 Collier on Bankruptcy (15th
 13 ed. rev. 2008) § 502.03 ("The validity and legality of claims generally is determined by
 14 applicable nonbankruptcy law"). Thus, 502(b)(1) is a codification of the "Butner principle,"
 15 first enunciated in the Supreme Court case of *Butner v. United States*, 440 U.S. 48 (U.S.
 16 1979), that bankruptcy law should to the extent possible not affect state law-created rights.
 17 *Id.* at 54; *see also, In re A.G. Financial Service Center, Inc.*, 395 F.3d 410 (7th Cir. 2005)
 18 (citing to the "Butner principle"); *In re Goco Realty Fund I*, 151 B.R. 241, 251 fn. 10
 19 (Bankr. N.D. Cal. 1993) ("applying the principles recognized in *Butner v. United States*, the
 20 determination of property rights in the assets [is left] to state law") (internal quotation
 21 omitted); *and In re Ginn*, 186 B.R. 898, 902 (Bankr. D. Md. 1995) (citing the "Butner
 22 principle that nonbankruptcy law should apply the same inside as outside of a bankruptcy
 23 case").

24 3. An Understanding of the Bankruptcy Court's Role Under 11 U.S.C.
 25 § 502(b)(1) Refutes Other of the Appellants' Arguments.

26 In view of the Bankruptcy Court's rule under 502(b)(1), not only are the Appellants'
 27 arguments regarding the Rooker-Feldman Doctrine beside the point, in that the Bankruptcy
 28 Court did not rely upon Rooker-Feldman, but Appellants' argument that the Bankruptcy

1 Court's Disallowance Orders were somehow violating that court's "exclusive jurisdiction to
2 determine the claims" is also wrong. (Opening Brief, 14:4 – 15:2). Rather, the Bankruptcy
3 Court merely assumed its natural function under the Bankruptcy Code in ruling that as a
4 matter of nonbankruptcy law, John Lezdey had no authority to act on behalf of PSI and
5 Sonoran. (AA 518:6-9.)

6 Section 502(b)(1) and the Butner principle also demonstrate the incorrectness in
7 Appellants' argument that the Bankruptcy Court "encroached upon state law." (Opening
8 Brief, 15:3-21.) The Bankruptcy Court did not issue a contempt order for Mr. Lezdey's
9 violation of the Preliminary Injunction, it again merely performed its function under
10 502(b)(1) and decided that Mr. Lezdey had no power to file the proofs of claim on behalf of
11 PSI and Sonoran under applicable nonbankruptcy law. Further, to the extent that
12 Appellants' argument is predicated on the idea that the Bankruptcy Court cannot punish PSI
13 and Sonoran for Mr. Lezdey's violation of the Preliminary Injunction (AA 15:3-4),
14 Appellants miss the point just as they did when they made the same argument in their brief
15 below. (SPA 352:2-11) While PSI and Sonoran are not subject to the Preliminary
16 Injunction, John Lezdey is. The relevant inquiry is not into the effect of the Arizona Court's
17 rulings on PSI and Sonoran, but rather their effect upon John Lezdey. As explained in
18 further detail in the previous subsection, the Bankruptcy Court correctly ruled that the effect
19 of the Arizona Court's rulings was to deprive Mr. Lezdey of the authority to file the proofs
20 of claim on behalf of PSI and Sonoran.

21 **C. This Court Should Refrain From Considering Those Arguments of the**
22 **Appellants that Were Not Raised Below.**

23 Before discussing the remainder of the arguments raised in Appellants' Opening
24 Brief, Arriva would like to point out that these arguments were not raised in the Appellants'
25 briefing in the Bankruptcy Court. These arguments are the following: (1) Arriva lacks
26 standing to object to Mr. Lezdey's authority to file proofs of claim on behalf of PSI and
27 Sonoran; (2) the Bankruptcy Court encroached upon corporate law; (3) Mr. Lezdey's filing
28

1 of the PSI and Sonoran proofs of claims was validated by the doctrine of apparent
2 authority.⁷

3 Though Arriva will demonstrate the manner in which each of these arguments lacks
4 merit, Arriva also submits that this could should refrain from considering these documents
5 by reason of the fact that they were not raised in the Bankruptcy Court below. *See e.g.*,
6 *Singleton v. Wulff*, 428 U.S. 106, 120-21 (U.S. 1976) ("a federal appellate court does not
7 consider an issue not passed upon below" unless "injustice might otherwise result") (internal
8 quotations omitted); *Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999) ("As a general
9 rule, we will not consider arguments that are raised for the first time on appeal."); *United*
10 *States v. Rode Corp.*, 996 F.2d 174, 180 (7th Cir. 1993) ("We consistently hold that
11 arguments not made in the district court are waived") (internal quotations omitted).

12 **D. Appellants' Newly-Raised Arguments Have No Merit.**

13 1. Arriva Had Standing to Object to the Claims of Sonoran and PSI.

14 In their Opening Brief, Appellants assert that the Bankruptcy Court erred in
15 disallowing the PSI and Sonoran Claims because Arriva lacked standing to challenge John
16 Lezdey's authority to file the Claims on behalf of PSI and Sonoran. (Opening Brief, 16:13-
17 15.) This argument is wrong as to both the facts and law presented in support of it.

18 As to the facts, it is clear that the Preliminary Injunction was intended to run to the
19 benefit of Arriva. Indeed, at the heart of the Arizona litigation was the validity of the
20 Protease License, an agreement between Arriva and PSI. (AA 242.) The Protease License
21 has been a point of contention between the Lezdeys and Arriva in the Northern District of
22 California litigation filed by Arriva in 1999 and also in the adversary proceeding filed by
23 AlphaMed in Arriva's bankruptcy case. (AA 190:2-3; 066-67.) Wachter was the owner of
24 an interest in Sonoran and PSI, and Arriva was the licensee under the Protease License.
25 Therefore, Dr. Wachter and Arriva had a common interest in getting a true and fair

26 _____
27 ⁷ The Appellants only tangentially and conclusorily stated in the introduction to their brief
28 below that "Debtor cannot claim the benefit of [the Preliminary Injunction]" (SPA 351:11-
12), but never contested Arriva's standing in the body of their argument.

1 adjudication of the rights of both parties under the Protease License. It is for this reason
2 that Arriva agreed to finance the Arizona litigation and Wachter agreed to share the
3 proceeds of the Wachter Judgment with Arriva. It is also for this reason that Arriva posted
4 the bond required by Arizona law in connection with the Preliminary Injunction. (AA
5 246:11-28.) This identity of interests between Wachter and Arriva was expressly
6 recognized by the Northern District of California when it dismissed the Lezdey
7 counterclaims in 2006, stating that the validity of the Protease License "has already been
8 extensively litigated in the Arizona Court, and that any litigation in this court would be
9 duplicative." (AA 190:12-13.)

10 As to the law, the single case cited in support of the Appellants' standing argument is
11 off base. Appellants cite to *Gens v. Resolution Trust Corp.*, 112 F.3d 569, 574 (1st
12 Cir.1997) to support their argument that Arriva did not have standing to challenge the
13 authority of an agent of a claimant to file a claim under Bankruptcy Rule 3001(b).
14 (Opening Brief, 17:13-15.) In *Gens*, the debtor based its objection to the agent's authority
15 on a federal regulation that was enacted to protect a class of persons of which the debtor
16 was not one. *Gens*, 112 F.3d at 574. The court in *Gens* was concerned about conferring
17 standing to all chapter 11 debtors to enforce the federal regulation in question. *Id.*
18 ("Nothing in the statute, the RTC regulation or the attendant case law remotely suggests that
19 Congress or the agency itself intended to confer standing on chapter 11 debtors to enforce
20 the RTC regulation"). No such concern is present in this case. Arriva is citing to a
21 particular decision rendered by a court, not a generally enacted federal regulation. Further,
22 Arriva is not, as Appellants contend, solely relying upon its status as a chapter 11 debtor to
23 question the authority of Mr. Lezdey to file the proofs of claim for PSI and Sonoran.
24 Rather, as noted above, Arriva is able to challenge Mr. Lezdey's authority because Arriva
25 was an intended beneficiary of the Preliminary Injunction.

26 Further, even if Arriva were solely relying on its status as a chapter 11 debtor to
27 object to a claim on this basis, it would be entitled to do so. Outside of the context of the
28 special situation in *Gens*, very few cases explicitly discuss standing requirements for

1 objections under Rule 3001(b). Most cases in which a debtor objects to proofs of claim
2 under 3001(b) simply assume without explicitly deciding that the debtor has standing to
3 object on this basis, and do not require the debtor to allege a specific interest in the subject
4 matter of the law or rule that denies the purported claimant the authority to file the proof of
5 claim. *See, e.g., In re W.R. Grace & Co.*, 366 B.R. 302, 304 (Bankr. D. Del. 2007) (debtor
6 is allowed to object to 71 proofs of claim by reason of lack of authority conferred by the
7 claimants to the filing attorneys). This is because a debtor's standing to object to a proof of
8 claim that seeks payment from its estate is unquestionable under the Bankruptcy Code. A
9 debtor or debtor-in-possession is clearly a "party in interest" under Bankruptcy Code
10 Section 502(a) that has standing to object to a claim. *In re Frazier*, 16 B.R. 674, 677
11 (Bankr. M.D. Tenn. 1981); *In re America West Airlines*, 208 B.R. 476, 479 (Bankr. D. Ariz.
12 1997). Finally, another consideration running in favor of Arriva's standing to object under
13 3001(b), aside from the fact that the Preliminary Injunction was intended for its benefit and
14 the fact that it had status as a chapter 11 debtor to object to the claim, is that to allow Mr.
15 Lezdey to file a proof of claim in Arriva's bankruptcy on behalf of PSI and Sonoran would
16 be to in effect allow Mr. Lezdey to reap the fruits of an unlawful action. It is an ancient and
17 time-honored doctrine that one shall not profit from one's own wrong. *See e.g., Future*
18 *Realty, Inc. v. City of Spokane*, 331 F.3d 1082, 1092 (9th Cir. 2003).

19 2. The Bankruptcy Court Did Not Encroach Upon Corporate Law.

20 Appellants are also incorrect in their argument that the disallowance of the PSI and
21 Sonoran Claims "encroached upon corporate law." (Opening Brief, 15:22-23.) As
22 explained above, the issue of Mr. Lezdey's authority to act on behalf of PSI and Sonoran
23 was already decided by the Arizona Court. The Bankruptcy Court then gave effect to the
24 Arizona Court's ruling when evaluating the claim under applicable nonbankruptcy law. The
25 purpose of giving effect to the Preliminary Injunction's findings was to avoid relitigation of
26 the corporate issues already decided by the Arizona Court.

1 3. The Apparent Authority Doctrine Neither Applies Nor Validates Mr.
 2 Lezdey's Filing of the PSI and Sonoran Claims.

3 Appellants also argue that the filings were valid under corporate law, citing *In re*
 4 *Cool Fuel, Inc.*, 117 Fed. Appx. 514 (9th Cir. 2004) for the proposition that the filings may
 5 be valid under the theory of apparent authority. (Opening Brief, 16:2-6.) The court in *Cool*
 6 *Fuel* cites the standard for apparent authority under California state law in the context of
 7 deciding the extent of a corporation's liability to third parties for the fraud of its officer: "A
 8 principal that puts an agent in a position that enables the agent, while apparently acting
 9 within his authority, to commit a fraud upon third persons is subject to liability to such third
 10 persons for the fraud." *Id.* at 516.

11 Appellants are wrong that the apparent authority doctrine could validate Mr.
 12 Lezdey's filing of the proofs of claim for two reasons. First, though under Bankruptcy
 13 Code Section 502(b)(1) and the Butner principle, nonbankruptcy state law governs the
 14 substance of claims, when it comes to the procedural aspects of a bankruptcy-created right
 15 such as the filing of a proof of claim, the Bankruptcy Code and Bankruptcy Rules govern.
 16 *Walls v. Wells Fargo Bank, N.A.*, 255 B.R. 38, 46 (E.D. Cal. 2000) (holding that the
 17 Bankruptcy Code governs the remedies for violations of Bankruptcy Code sections), *aff'd*
 18 276 F.3d 502 (9th Cir. 2002). Specifically, Bankruptcy Rule 3001(b) governs the
 19 authorization required to file a proof of claim, a mechanism created by the Bankruptcy
 20 Code, on behalf of a party entitled to file under Bankruptcy Code Section 501. Thus, the
 21 scheme of the Bankruptcy Code and Bankruptcy Rules preempts the agency authority
 22 doctrine with respect to the effect of an authorized filing of a proof of claim such as the one
 23 attempted by Mr. Lezdey.

24 Second, the apparent authority doctrine cannot validate Mr. Lezdey's actions because
 25 there was no reliance upon Mr. Lezdey's authority by third parties. As per the standard
 26 cited by the Appellants in *Cool Fuel*, the apparent authority doctrine does not make the
 27 unauthorized corporate action valid as to the world, but only as to those who detrimentally
 28 relied upon the action. It is fundamentally a doctrine about corporate liability. *See, e.g.*,

1 *Ermoian v. Desert Hospital*, 152 Cal.App.4th 475 (Cal. Ct. App. 2007) (“The essential
2 elements [of the apparent authority doctrine] are representations by the principal, justifiable
3 reliance thereon by a third party, and change of position or injury resulting from such
4 reliance”). In this case, no third party is alleged to have relied on whatever apparent
5 authority Mr. Lezdey might have, since the automatic stay was in place preventing
6 distributions of the estate’s assets without court approval, 11 U.S.C. § 362(d) and Arriva
7 filed a timely objection to the Claims. Thus, it is not possible for the apparent authority
8 doctrine to have validated the filing of the proofs of claims even if it were not preempted by
9 the Bankruptcy Code and Bankruptcy Rules.

10 VI. CONCLUSION

11 For the reasons cited above, the Bankruptcy Court did not err when it disallowed the
12 Claims of PSI and Sonoran. This Court should affirm the Bankruptcy Court's Disallowance
13 Orders and afford a finality to these proceedings that would benefit not only Arriva, but the
14 multitude of other unsecured creditors sharing in Arriva's unsecured claims pool, all of
15 whom have suffered from the same tired and redundant arguments of the Lezdeys that the
16 Bankruptcy Court sought in part to foreclose when it disallowed the Claims of PSI and
17 Sonoran.

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20

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